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OFFICE OF
INSURANCE COMMISSIONER

BULLETIN

NO. 91 - 8

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Subject: PHYSICIAN'S LIMITING CHARGE -- MEDICARE SUPPLEMENT

The Commissioner recently has become aware that some insurers are failing to meet their obligations to Medicare beneficiaries under Medicare supplement insurance contracts in the area of excess physician charges (sometimes called "balance billing").

Many Medicare supplement insurance policies provide coverage for some or all of the difference between the amount Medicare recognizes as allowable and the amount the physician actually charges the patient. In the Omnibus Budget Reconciliation Act of 1989 (OBRA'89), Congress established new limits on physician balance billing in conjunction with Medicare physician payment reform, called "Limiting Charges." These charge limitations phase-in between 1991 and 1993. In 1991, the Limiting Charge is calculated separately for each physician and service. By 1993, when the Medicare fee schedule will be in effect, the Limiting Charge will be more easily calculated as a specified percentage in excess of the amount determined by the schedule.

Unfortunately, some insurers are attempting to restrict their liability for excess charges through erroneous interpretations of the new Medicare charge limitations. The following describes practices in this area that the Commissioner has determined are improper:

Limiting payments to the insured by capping reimbursements at 125% or 145% of the "Medicare approved amount" shown on the Explanation of Medicare Benefits (EOMB).

This is improper for two reasons. First, this is an incorrect calculation of the Limiting Charge. The Limiting Charge currently must be calculated separately for each physician and service; it is not simply a multiple of the amount shown on the EOMB. And second, the charge limitations are not enforced in a manner that ensures that patients will not be liable for amounts in excess of the Limiting Charge.

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- Limiting payment to the insured on the basis that the insured is not "legally obligated" to pay more than the Limiting Charge amount to the physician.

According to the Health Care Financing Administration (HCFA), the federal agency which administers Medicare, this is an incorrect interpretation of the Limiting Charge. OBRA '89 establishes penalties for physicians who knowingly and repeatedly charge beneficiaries above the Limiting Charge. That statute, however, does not necessarily prevent physicians from charging in excess of the Limiting Charge in some instances and does not relieve the beneficiary of his or her legal obligation to pay the additional amount. HCFA is reconsidering this position, but currently there is no clear statement from the federal government limiting beneficiary liability to the amount of the Limiting Charge.

- Limiting payment to the insured on the basis that the Usual, Customary and Reasonable (UCR) amount is the Limiting Charge.

The Limiting Charge is based on a complicated formula which considers Medicare payment rules and the physician's historic Medicare billing practices. It is not necessarily related to UCR charges for the service in the patient's area.

The Commissioner believes that insurers should not be using the Limiting Charge to limit payment for excess physician charges unless the insurance policy makes specific reference to the Limiting Charge. The practices described above not only have the untenable consequence of placing Medicare beneficiaries in the middle of a technical dispute between their insurer and their physician about federal law, but in many instances insureds are being denied benefits promised in their policies.

Insurers should cease these practices in this state immediately. Insurers that have erroneously relied on the Medicare Limiting Charge to restrict reimbursement should immediately search their claim files and correct errors made on past claims.

DICK MARQUARDT
Insurance Commissioner